

ASSEMBLY BILL

No. 1258

Introduced by Assembly Member Ackerman

February 28, 1997

An act to amend Sections 483.020, 484.050, 484.090, 485.220, and 492.030 of, to add Section 483.012 to, and to repeal and add Sections 483.010 and 483.015 of, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1258, as introduced, Ackerman. Civil procedure: attachment.

(1) Existing law generally permits the use of a prejudgment attachment in civil actions to recover on certain obligations secured by personal property, or secured by fixtures under the Commercial Code or, in limited cases, secured by real property. Existing law excludes from the amount that may be secured by attachment the value of any security interest held by the plaintiff in the defendant's property to secure the defendant's indebtedness to the plaintiff, together with any decrease in the value of the security by reason of acts of the plaintiff or person to whom the security interest was transferred.

Under existing law these provisions would be repealed on January 1, 1998, and other provisions would become operative that, with certain exceptions, preclude the use of a prejudgment attachment.

This bill would revise and recast these provisions, as specified.

This bill would provide that, in an action to foreclose a mortgage or deed of trust on real property or an estate for years, the filing of any application or motion pursuant to provisions of existing law regarding prejudgment attachment shall not constitute an action for the recovery of a debt secured by a mortgage or deed of trust or a failure to comply with other specified requirements to proceed first against the security.

(2) Existing law prescribes the procedures to obtain a writ of attachment and to determine the amount that may be attached.

This bill would revise these provisions, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 483.010 of the Code of Civil
2 Procedure, as amended by Section 2 of Chapter 591 of the
3 Statutes of 1995, is repealed.

4 ~~483.010. (a) Except as otherwise provided by statute,~~
5 ~~an attachment may be issued only in an action on a claim~~
6 ~~or claims for money, each of which is based upon a~~
7 ~~contract, express or implied, where the total amount of~~
8 ~~the claim or claims is a fixed or readily ascertainable~~
9 ~~amount not less than five hundred dollars (\$500)~~
10 ~~exclusive of costs, interest, and attorney's fees.~~

11 ~~(b) An attachment may not be issued on a claim which~~
12 ~~is secured by any interest in real or personal property~~
13 ~~arising from agreement, statute, or other rule of law~~
14 ~~(including any mortgage or deed of trust of realty, any~~
15 ~~security interest subject to Division 9 (commencing with~~
16 ~~Section 9101) of the Commercial Code, and any statutory,~~
17 ~~common law, or equitable lien). However, an attachment~~
18 ~~may be issued (1) where the claim was originally so~~
19 ~~secured but, without any act of the plaintiff or the person~~
20 ~~to whom the security was given, the security has become~~
21 ~~valueless or has decreased in value to less than the amount~~
22 ~~then owing on the claim, in which event the amount for~~
23 ~~which the attachment may issue shall not exceed the~~

~~1 lesser of the amount of the decrease or the difference
2 between the value of the security and the amount then
3 owing on the claim, or (2) where the claim was secured
4 by a nonconsensual possessory lien but the lien has been
5 relinquished by the surrender of the possession of the
6 property.~~

~~7 (c) If the action is against a defendant who is a natural
8 person, an attachment may be issued only on a claim
9 which arises out of the conduct by the defendant of a
10 trade, business, or profession. An attachment may not be
11 issued on a claim against a defendant who is a natural
12 person if the claim is based on the sale or lease of property,
13 a license to use property, the furnishing of services, or the
14 loan of money where the property sold or leased, or
15 licensed for use, the services furnished, or the money
16 loaned was used by the defendant primarily for personal,
17 family, or household purposes.~~

~~18 (d) An attachment may be issued pursuant to this
19 section whether or not other forms of relief are
20 demanded.~~

~~21 (e) This section shall become operative on January 1,
22 1998.~~

23 SEC. 2. Section 483.010 is added to the Code of Civil
24 Procedure, to read:

25 483.010. (a) Except as otherwise provided by statute,
26 an attachment may be issued only in an action on a claim
27 or claims for money, each of which is based upon a
28 contract, express or implied, where the total amount of
29 the claim or claims is a fixed or readily ascertainable
30 amount not less than five hundred dollars (\$500)
31 exclusive of costs, interest, and attorney's fees.

32 (b) An attachment may not be issued on a claim which
33 is secured by any interest in real property arising from
34 agreement, statute, or other rule of law (including any
35 mortgage or deed of trust of realty and any statutory,
36 common law, or equitable lien on real property, but
37 excluding any security interest in fixtures subject to
38 Division 9 (commencing with Section 9101) of the
39 Commercial Code). However, an attachment may be
40 issued where the claim was originally so secured but,

1 without any act of the plaintiff or the person to whom the
2 security was given, the security has become valueless or
3 has decreased in value to less than the amount then owing
4 on the claim, in which event the amount to be secured by
5 the attachment shall not exceed the lesser of the amount
6 of the decrease or the difference between the value of the
7 security and the amount then owing on the claim.

8 (c) If the action is against a defendant who is a natural
9 person, an attachment may be issued only on a claim
10 which arises out of the conduct by the defendant of a
11 trade, business, or profession. An attachment may not be
12 issued on a claim against a defendant who is a natural
13 person if the claim is based on the sale or lease of property,
14 a license to use property, the furnishing of services, or the
15 loan of money where the property sold or leased, or
16 licensed for use, the services furnished, or the money
17 loaned was used by the defendant primarily for personal,
18 family, or household purposes.

19 (d) An attachment may be issued pursuant to this
20 section whether or not other forms of relief are
21 demanded.

22 SEC. 3. Section 483.012 is added to the Code of Civil
23 Procedure, to read:

24 483.012. In an action to foreclose a mortgage or deed
25 of trust on real property or an estate for years therein,
26 neither the filing of any application or motion pursuant
27 to this title, nor the issuance of an order or writ pursuant
28 to this title, shall constitute an action for the recovery of
29 a debt for purposes of subdivision (a) of Section 726 or a
30 failure to comply with any other statutory or judicial
31 requirement to proceed first against security.

32 SEC. 4. Section 483.015 of the Code of Civil
33 Procedure, as amended by Section 4 of Chapter 591 of the
34 Statutes of 1995, is repealed.

35 ~~483.015. (a) Subject to subdivision (b) and to Section~~
36 ~~483.020, the amount to be secured by an attachment is the~~
37 ~~sum of the following:~~

38 ~~(1) The amount of the defendant's indebtedness~~
39 ~~claimed by the plaintiff.~~

~~(2) Any additional amount included by the court under Section 482.110.~~

~~(b) The amount described in subdivision (a) shall be reduced by the sum of the following:~~

~~(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.~~

~~(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.~~

~~(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.~~

~~(e) This section shall become operative on January 1, 1998.~~

SEC. 5. Section 483.015 is added to the Code of Civil Procedure, to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could

1 be issued had an action been brought on the claim when
2 it was not barred by the statute of limitations.

3 (4) The value of any security interest in the property
4 of the defendant held by the plaintiff to secure the
5 defendant's indebtedness claimed by the plaintiff,
6 together with the amount by which the value of the
7 security interest has decreased due to the act of the
8 plaintiff or a prior holder of the security interest.

9 SEC. 6. Section 483.020 of the Code of Civil Procedure
10 is amended to read:

11 483.020. (a) Subject to subdivisions (d) and (e), the
12 amount to be secured by the attachment in an unlawful
13 detainer proceeding is the sum of the following:

14 (1) The amount of the rent due and unpaid as of the
15 date of filing the complaint in the unlawful detainer
16 proceeding.

17 (2) Any additional amount included by the court
18 under subdivision (c).

19 (3) Any additional amount included by the court
20 under Section 482.110.

21 (b) In an unlawful detainer proceeding, the plaintiff's
22 application for a right to attach order and a writ of
23 attachment pursuant to this title may include (in addition
24 to the rent due and unpaid as of the date of the filing of
25 the complaint and any additional estimated amount
26 authorized by Section 482.110) an amount equal to the
27 rent for the period from the date the complaint is filed
28 until the estimated date of judgment or such earlier
29 estimated date as possession has been or is likely to be
30 delivered to the plaintiff, such amount to be computed at
31 the rate provided in the lease.

32 (c) The amount to be secured by the attachment in
33 the unlawful detainer proceeding may, in the discretion
34 of the court, include an additional amount equal to the
35 amount of rent for the period from the date the complaint
36 is filed until the estimated date of judgment or such
37 earlier estimated date as possession has been or is likely
38 to be delivered to the plaintiff, such amount to be
39 computed at the rate provided in the lease.



1 ~~(d) Notwithstanding subdivision (b) of Section~~
2 ~~483.010, an attachment may be issued in an unlawful~~
3 ~~detainer proceeding where Except as provided in~~
4 ~~subdivision (e), the amount specified in this section to be~~
5 ~~secured by the attachment shall be reduced by the~~
6 ~~amounts described in subdivision (b) of Section 483.015.~~

7 ~~(e) Where the plaintiff has received a payment or~~
8 ~~holds a deposit to secure the payment of rent or the~~
9 ~~performance of other obligations under the lease. If the~~
10 ~~payment or deposit secures only the payment of rent, the~~
11 ~~amount of the payment or deposit shall be subtracted in~~
12 ~~determining the amount to be secured by the~~
13 ~~attachment. If the payment or deposit secures (1) the~~
14 ~~payment of rent and the performance of other obligations~~
15 ~~under the lease or secures (2) only the performance of~~
16 ~~other obligations under the lease, the amount of the~~
17 ~~payment or deposit shall not be subtracted in~~
18 ~~determining the amount to be secured by the~~
19 ~~attachment.~~

20 ~~(e) The amount to be secured by the attachment as~~
21 ~~otherwise determined under this section shall be reduced~~
22 ~~by the amounts described in subdivision (b) of Section~~
23 ~~483.015.~~

24 SEC. 7. Section 484.050 of the Code of Civil Procedure
25 is amended to read:

26 484.050. The notice of application and hearing shall
27 inform the defendant of all of the following:

28 (a) A hearing will be held at a place and at a time, to
29 be specified in the notice, on plaintiff's application for a
30 right to attach order and a writ of attachment.

31 (b) The order will be issued if the court finds that the
32 plaintiff's claim is probably valid and the other
33 requirements for issuing the order are established. The
34 hearing is not for the purpose of determining whether the
35 claim is actually valid. The determination of the actual
36 validity of the claim will be made in subsequent
37 proceedings in the action and will not be affected by the
38 decisions at the hearing on the application for the order.

39 (c) The amount to be secured by the attachment is ~~the~~
40 ~~amount of the defendant's indebtedness claimed by the~~

~~1 plaintiff over and above the sum of (1) the amount of any
2 money judgment in favor of the defendant and against
3 the plaintiff that remains unsatisfied and is enforceable;
4 (2) the amount of any indebtedness of the plaintiff
5 claimed by the defendant in a cross-complaint filed in the
6 action if the defendant's claim is one upon which an
7 attachment could be issued, and (3) the amount of any
8 claim of the defendant asserted as a defense in the answer
9 pursuant to Section 431.70 if the defendant's claim is one
10 upon which an attachment could be issued had an action
11 been brought on the claim when it was not barred by the
12 statute of limitations determined pursuant to Sections
13 482.110, 483.010, 483.015, and 483.020, which statutes shall
14 be summarized in the notice.~~

(d) If the right to attach order is issued, a writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. However, additional writs of attachment may be issued to attach other nonexempt property of the defendant on the basis of the right to attach order.

(e) If the defendant desires to oppose the issuance of the order, the defendant shall file with the court and serve on the plaintiff a notice of opposition and supporting affidavit as required by Section 484.060 not later than five court days prior to the date set for hearing.

(f) If the defendant claims that the personal property described in the application, or a portion thereof, is exempt from attachment, the defendant shall include that claim in the notice of opposition filed and served pursuant to Section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Section 484.070. If the defendant does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

(g) The defendant may obtain a determination at the hearing whether real or personal property not described

1 in the application or real property described in the
2 application is exempt from attachment by including the
3 claim in the notice of opposition filed and served pursuant
4 to Section 484.060 or by filing and serving a separate claim
5 of exemption with respect to the property as provided in
6 Section 484.070, but the failure to so claim that the
7 property is exempt from attachment will not preclude
8 the defendant from making a claim of exemption with
9 respect to the property at a later time.

10 (h) Either the defendant or the defendant's attorney
11 or both of them may be present at the hearing.

12 (i) The notice shall contain the following statement:
13 "You may seek the advice of an attorney as to any matter
14 connected with the plaintiff's application. The attorney
15 should be consulted promptly so that the attorney may
16 assist you before the time set for hearing."

17 SEC. 8. Section 484.090 of the Code of Civil Procedure
18 is amended to read:

19 484.090. (a) At the hearing, the court shall consider
20 the showing made by the parties appearing and shall issue
21 a right to attach order, which shall state the amount to be
22 secured by the attachment determined by the court in
23 accordance with Section 483.015 or 483.020, if it finds all
24 of the following:

25 (1) The claim upon which the attachment is based is
26 one upon which an attachment may be issued.

27 (2) The plaintiff has established the probable validity
28 of the claim upon which the attachment is based.

29 (3) The attachment is not sought for a purpose other
30 than the recovery on the claim upon which the
31 attachment is based.

32 (4) *The amount to be secured by the attachment is*
33 *greater than zero.*

34 (b) If, in addition to the findings required by
35 subdivision (a), the court finds that the defendant has
36 failed to prove that all the property sought to be attached
37 is exempt from attachment, it shall order a writ of
38 attachment to be issued upon the filing of an undertaking
39 as provided by Sections 489.210 and 489.220.

(c) If the court determines that property of the defendant is exempt from attachment, in whole or in part, the right to attach order shall describe the exempt property and prohibit attachment of the property.

(d) The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of the additional evidence or points and authorities.

SEC. 9. Section 485.220 of the Code of Civil Procedure is amended to read:

485.220. (a) The court shall examine the application and supporting affidavit and, except as provided in Section 486.030, shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220, if it finds all of the following:

(1) The claim upon which the attachment is based is one upon which an attachment may be issued.

(2) The plaintiff has established the probable validity of the claim upon which the attachment is based.

(3) The attachment is not sought for a purpose other than the recovery upon the claim upon which the attachment is based.

(4) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is not exempt from attachment.

(5) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if issuance of the order is delayed until the matter can be heard on notice.

(6) *The amount to be secured by the attachment is greater than zero.*

(b) If the court finds that the application and the supporting affidavit do not satisfy the requirements of Section 485.010, it shall so state and deny the order. If denial is solely on the ground that Section 485.010 is not

1 satisfied, the court shall so state and such denial does not
2 preclude the plaintiff from applying for a right to attach
3 order and writ of attachment under Chapter 4
4 (commencing with Section 484.010) with the same
5 affidavits and supporting papers.

6 SEC. 10. Section 492.030 of the Code of Civil
7 Procedure is amended to read:

8 492.030. (a) The court shall examine the application
9 and supporting affidavit and shall issue a right to attach
10 order, which shall state the amount to be secured by the
11 attachment, and order a writ of attachment to be issued
12 upon the filing of an undertaking as provided by Sections
13 489.210 and 489.220, if it finds all of the following:

14 (1) The claim upon which the attachment is based is
15 one upon which an attachment may be issued.

16 (2) The plaintiff has established the probable validity
17 of the claim upon which the attachment is based.

18 (3) The defendant is one described in Section 492.010.

19 (4) The attachment is not sought for a purpose other
20 than the recovery on the claim upon which the
21 attachment is based.

22 (5) The affidavit accompanying the application shows
23 that the property sought to be attached, or the portion
24 thereof to be specified in the writ, is subject to
25 attachment pursuant to Section 492.040.

26 (6) *The amount to be secured by the attachment is*
27 *greater than zero.*

28 (b) If the court finds that the application and
29 supporting affidavit do not satisfy the requirements of
30 this chapter, it shall so state and deny the order. If denial
31 is solely on the ground that the defendant is not one
32 described in Section 492.010, the judicial officer shall so
33 state and such denial does not preclude the plaintiff from
34 applying for a right to attach order and writ of attachment
35 under Chapter 4 (commencing with Section 484.010)
36 with the same affidavits and supporting papers.